

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

BOSTON GAS COMPANY d/b/a
KEYSPAN ENERGY DELIVERY OF
NEW ENGLAND

D.T.E. 05-66

ATTORNEY GENERAL'S MOTION FOR CLARIFICATION

I. INTRODUCTION

Pursuant to 220 C.M.R. § 1.04(5) and Department of Telecommunications and Energy (“Department”) precedent, the Attorney General seeks clarification of the Department’s November 1, 2005 decision (“Order”). The Order is ambiguous as to the contents of record relied upon by the Department in rendering its decision, soThe Attorney General asks the Department to clarify what constitutes the contents of the record in this proceeding. .

II. PROCEDURAL HISTORY

On September 16, 2005, Boston Gas Company d/b/a Keyspan Energy Delivery New England (“Keyspan” or “the Company”), pursuant to its last rate case, Boston Gas Company, D.T.E. 03-40 (2003), filed its Second Annual Performance-Based Rate (“PBR”) Adjustment for approval under G. L. c. 164, §94. According to the company, the proposal would increase its total annual base distribution revenues by \$7.19 million. Additionally, the Company proposed to collect under-recoveries of gas-related bad debt expense as an exogenous cost through the cost of gas adjustment clause (“CGAC”). On October 11, 2005, the Department issued an Order of Notice and requested comments on the Company’s filing. Pursuant to this notice, the Attorney General filed comments including an exhibit on October 20, 2005. On October 25, 2005, the

Company filed reply comments. In response to requests by the Department, the Company also answered information requests.

On November 1, 2005, the Department issued its Order allowing the Company's proposed PBR adjustment and authorizing the Company to collect an additional \$9,012,035.00 in gas-related bad debt expenses as an exogenous cost, subject to reconciliation. Although the Department discussed the Company's filing and reply, the Attorney General's comments and sworn attachment, and certain information from other proceedings, the Department only moved the Company's responses to information requests "into the evidentiary record in this case" on its own motion. Order, p. 1, fn. 1.

III. STANDARD OF REVIEW

A. Clarification

The Department may clarify previously issued orders when an order is silent as to the disposition of a specific issue requiring determination in the order or when the order contains language that is so ambiguous as to leave doubt as to its meaning. *Boston Edison Company*, D.P.U. 92-1A-B, p. 4 (1993). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. *Boston Edison Company*, D.P.U. 90-35-A, p. 3 (1992), citing *Fitchburg Gas & Electric Light Company*, D.P.U. 18296/18297, p. 2 (1976).

III. ARGUMENT

A. Scope Of The Record

According to Chapter 30A the Department is required to render decisions based on substantial evidence appearing in the record of the proceeding. G. L. c 30A, §14(7); *Boston Gas Company v. Department of Telecommunications and Energy*, 346 Mass. 233, 241(2002).

Neither the Department's regulations nor Chapter 30A specifically define the contents of the record, although they give some guidance. 220 C.M.R. §§ 1.10 (1) -- (10) (listing requirements for evidence to be considered); G. L. c. 30A, §§ 10-13. Among other things, Chapter 30A requires the Department to (1) give reasonable notice any hearings; (2) afford parties an opportunity to cross-examine witnesses; (3) maintain an evidentiary record upon which it bases its decision; and (4) provide notification of evidence taken by official notice. G. L. c. 30A, §11. Parties must have sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument. *Id.*

Although Chapter 30A and Department regulations permit a great variety of sources for evidence, the Department only moved the Company's answers to a few information requests into the "evidentiary record" for its decision. Order, p. 1, fn. 1. This ruling, on the Department's own motion, implicitly excludes other material submitted by the parties for consideration, including: 1) the Company's filing, 2) the Attorney General's Comments and sworn attachment,¹ 3) the Company's Reply Comments, and 4) certain information from other proceedings or sources. This procedure excluded evidence admissible under 220 C.M.R. § 1.10(1) and leaves

¹ Since the Attorney General had no notice that the Department would create a separate evidentiary record in this proceeding, the Attorney General asks the Department to move the Attorney General's comments and attachment into the evidentiary record.

doubt as to whether the Department considered for evidentiary purposes information under 220 C.M.R. §§ 1.10(2) & (3) . Consequently, it is unclear what substantial record evidence the Department relied upon in making its decision.

IV. CONCLUSION

The Department should allow this request to clarify the issues raised in this motion and specify the contents of the record in this proceeding it relied upon in compliance with 220 C.M.R. §§ 1.10 (1) -- (10) and Chapter 30A. Granting clarification will also provide guidance for evidentiary procedures parties should follow in other comment proceedings before the Department.

Respectfully Submitted,

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